

AMENDED IN SENATE AUGUST 13, 2014

AMENDED IN SENATE JUNE 12, 2014

AMENDED IN SENATE MARCH 6, 2014

CALIFORNIA LEGISLATURE—2013–14 REGULAR SESSION

ASSEMBLY BILL

No. 816

Introduced by Assembly Member Hall

February 21, 2013

~~An act to amend Sections 25000.2 and 25500.1 of, and to repeal Section 25502.1 of, the Business and Professions Code, relating to alcoholic beverages. An act to add Section 6371.5 of the Revenue and Taxation Code, relating to taxation, to take effect immediately, tax levy.~~

LEGISLATIVE COUNSEL'S DIGEST

AB 816, as amended, Hall. ~~Alcoholic beverages. Sales and use taxes: exemption: public utility: energy efficiency program.~~

Existing sales and use tax laws impose a tax on retailers measured by the gross receipts from the sale of tangible personal property sold at retail in this state, or on the storage, use, or other consumption in this state of tangible personal property purchased from a retailer for storage, use, or other consumption in this state, as measured by sales price. Those laws provides various exemptions from those taxes.

Under existing law, the Public Utilities Commission has regulatory authority over public utilities, including electric corporations and gas corporations, while a local public owned electric utility is under the direction of its governing board. Existing law authorizes the commission to fix the rates and charges for every public utility, and requires that those rates and charges be just and reasonable. Existing law requires the commission to establish a program of assistance to low-income

electric and gas customers, referred to as the California Alternate Rates for Energy (CARE) program. The CARE program provides lower rates to low-income customers. Eligibility for the CARE program is for those electric and gas customers with annual household incomes that are no greater than 200% of the federal poverty guideline levels.

This bill would exempt from those taxes the gross receipts from the sale in this state of, and the storage, use, or other consumption in this state of, an energy or water efficient home appliance, as defined, purchased by a public utility that are provided at no cost to a participant in an energy efficiency program.

The Bradley-Burns Uniform Local Sales and Use Tax Law authorizes counties and cities to impose local sales and use taxes in conformity with the Sales and Use Tax Law, and existing law authorizes districts, as specified, to impose transactions and use taxes in accordance with the Transactions and Use Tax Law, which conforms to the Sales and Use Tax Law. Amendments to state sales and use taxes are incorporated into these laws.

Section 2230 of the Revenue and Taxation Code provides that the state will reimburse counties and cities for revenue losses caused by the enactment of sales and use tax exemptions.

This bill would provide that, notwithstanding Section 2230 of the Revenue and Taxation Code, no appropriation is made and the state shall not reimburse any local agencies for sales and use tax revenues lost by them pursuant to this bill.

This bill would take effect immediately as a tax levy.

~~(1) The Alcoholic Beverage Control Act authorizes a licensed beer manufacturer that produces more than 60,000 barrels of beer a year to manufacture cider or perry, as defined, at the licensed premises of production and to sell cider or perry to any licensee authorized to sell wine. Further, under existing law, if a successor beer manufacturer, as defined, acquires the rights to manufacture, import, or distribute a product, defined as a brand or brands of beer, and then cancels the distribution rights of an existing beer wholesaler, as defined, the successor beer manufacturer is required to notify the existing beer wholesaler of his or her intent to cancel those rights. Existing law also requires the existing beer wholesaler to continue to distribute the product to at least the same extent that it distributed the product immediately before the successor beer manufacturer acquired rights to the product until receipt of the payment of the specified compensation is made or~~

awarded. The act provides that a violation of its provisions is a misdemeanor, unless otherwise specified.

This bill would redefine “product” to also include cider or perry that a beer manufacturer has designated a beer wholesaler to distribute in a specific territory. By changing the definition of a crime, the bill would impose a state-mandated local program.

(2) The Alcoholic Beverage Control Act contains limitations on sales commonly known as “tied-house” restrictions, which generally prohibit a manufacturer, winegrower, manufacturer’s agent, California winegrower’s agent, rectifier, distiller, bottler, importer, or wholesaler from furnishing, giving, or lending any money or other thing of value to any person engaged in operating, owning, or maintaining any off-sale licensed premises. For purposes of these provisions, the listing of the names, addresses, telephone numbers, or email addresses, or Internet Web site addresses, of 2 or more unaffiliated off-sale retailers selling beer, wine, or distilled spirits and operating and licensed as bona fide public eating places selling the beer, wine, or distilled spirits produced, distributed, or imported by a nonretail industry member in response to a direct inquiry from a consumer, as specified, does not constitute a thing of value or prohibited inducement to the listed off-sale retailer, if specified conditions are met.

Existing law includes similar provisions applicable to on-sale licensed premises, except that those provisions also extend the above-described exception to other forms of electronic media.

This bill would delete the above exceptions that apply specifically to off-sale licensed premises and instead would include off-sale licensed premises within the exceptions previously applicable only to on-sale licensed premises.

(3) The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that no reimbursement is required by this act for a specified reason.

Vote: majority. Appropriation: no. Fiscal committee: yes.
State-mandated local program: yes/no.

The people of the State of California do enact as follows:

1 SECTION 1. Section 6371.5 is added to the Revenue and
2 Taxation Code, to read:

6371.5. (a) *There are exempted from the taxes imposed by this part the gross receipts from the sale of, and the storage and use of, or other consumption in this state of an energy or water efficient home appliance purchased by a public utility that is provided at no cost to a participant in a federal, state, or ratepayer-funded energy efficiency program for use by that participant in the energy efficiency program.*

(b) *For purposes of this section:*

(1) *“Energy or water efficient home appliance” means an appliance that meets performance requirements under the ENERGY STAR program, established pursuant to Section 6294a of Title 42 of the United States Code, or a similarly labeled refrigerator, dishwasher, washer, dryer, or other appliance with a Tier I equivalent or better energy efficiency rating.*

(2) *“Public utility” means an entity defined in Section 216 or 224.3 of the Public Utilities Code.*

SEC. 2. *Notwithstanding Section 2230 of the Revenue and Taxation Code, no appropriation is made by this act and the state shall not reimburse any local agency for any sales and use tax revenues lost by it under this act.*

SEC. 3. *This act provides for a tax levy within the meaning of Article IV of the Constitution and shall go into immediate effect.*

SECTION 1. ~~Section 25000.2 of the Business and Professions Code is amended to read:~~

~~25000.2. (a) For purposes of this section:~~

~~(1) “Acquire” means to purchase, receive, assume, obtain, or otherwise come into possession or control of.~~

~~(2) “Affected distribution rights” means the distribution rights to the product held by the existing beer wholesaler before the acquisition of the right to manufacture, import, or distribute the product by the successor beer manufacturer.~~

~~(3) “Beer manufacturer” includes any holder of a beer manufacturer’s license, any holder of an out-of-state beer manufacturer’s certificate, or any holder of a beer and wine importer’s general license.~~

~~(4) “Cancel” means to terminate, reduce, not renew, not appoint or reappoint, or cause any of the same.~~

~~(5) “Existing beer wholesaler” means a beer wholesaler that distributes a product at the time a successor beer manufacturer~~

1 ~~acquires the rights to manufacture, import, or distribute that~~
2 ~~product.~~

3 ~~(6) “Fair market value” includes all elements of value, including,~~
4 ~~but not limited to, goodwill.~~

5 ~~(7) “Product” means a brand or brands of beer, as defined by~~
6 ~~Section 23006, and any brand or brands of cider or perry that a~~
7 ~~beer manufacturer has designated a beer wholesaler to distribute~~
8 ~~in a specific territory.~~

9 ~~(8) “Successor beer manufacturer” means a beer manufacturer~~
10 ~~that acquires the rights to manufacture, import, or distribute a~~
11 ~~product.~~

12 ~~(9) “Successor beer manufacturer’s designee” means one or~~
13 ~~more distributors designated by the successor beer manufacturer~~
14 ~~to replace the existing beer wholesaler, for all or part of the existing~~
15 ~~beer wholesaler’s territory, in the distribution of the product.~~

16 ~~(b) (1) Any successor beer manufacturer that acquires the rights~~
17 ~~to manufacture, import, or distribute a product, and who cancels~~
18 ~~any of the existing beer wholesaler’s rights to distribute the~~
19 ~~product, shall comply with this section.~~

20 ~~(2) A successor beer manufacturer’s designee shall comply with~~
21 ~~this section.~~

22 ~~(c) (1) The successor beer manufacturer shall notify the existing~~
23 ~~beer wholesaler of the successor beer manufacturer’s intent to~~
24 ~~cancel any of the existing beer wholesaler’s rights to distribute the~~
25 ~~product.~~

26 ~~(2) The successor beer manufacturer shall mail the notice by~~
27 ~~certified mail, return receipt requested, to the existing beer~~
28 ~~wholesaler. The successor beer manufacturer shall include in the~~
29 ~~notice the name, address, and telephone number of the successor~~
30 ~~beer manufacturer’s designee or designees.~~

31 ~~(d) The successor beer manufacturer’s designee shall negotiate~~
32 ~~with the existing beer wholesaler to determine the fair market value~~
33 ~~of the affected distribution rights and, if the existing beer~~
34 ~~wholesaler and the successor beer manufacturer’s designee agree~~
35 ~~to the fair market value of the affected distribution rights, shall~~
36 ~~compensate the existing beer wholesaler in the agreed amount.~~
37 ~~The successor beer manufacturer’s designee and the existing beer~~
38 ~~wholesaler shall negotiate in good faith.~~

39 ~~(e) The existing beer wholesaler shall continue to distribute the~~
40 ~~product to at least the same extent that it distributed the product~~

1 immediately before the successor beer manufacturer acquired rights
2 to the product until receipt of the payment of the compensation
3 agreed to under subdivision (d) is made or is awarded under
4 subdivision (f). The successor beer manufacturer and the existing
5 beer wholesaler shall act in good faith regarding the ongoing supply
6 and distribution of the product.

7 (f) If the successor beer manufacturer's designee and the existing
8 beer wholesaler are unable to mutually agree on the fair market
9 value of the affected distribution rights within 30 days of the
10 existing beer wholesaler's receipt of the successor beer
11 manufacturer's notice pursuant to subdivision (e), the successor
12 beer manufacturer's designee or the existing beer wholesaler shall
13 initiate arbitration against each other to determine the issue of
14 compensation for the fair market value of the affected distribution
15 rights no later than 40 days after the existing beer wholesaler's
16 receipt of the successor beer manufacturer's notice pursuant to
17 subdivision (e). Upon submission to arbitration, the arbitration
18 shall be the means of determining compensation to the existing
19 beer wholesaler for the fair market value of the affected distribution
20 rights, and the fair market value of the affected distribution rights
21 shall be the purpose of the arbitration unless the parties agree
22 otherwise.

23 (1) An arbitration held under this subdivision shall be held in
24 California through a private arbitration services provider with at
25 least three offices in California and a statewide roster of at least
26 70 neutral arbitrators, of which at least 30 have prior experience
27 as a sole arbitrator in franchise, distribution, or related business
28 litigation.

29 (2) The direct costs of the arbitration, including any fees charged
30 by the arbitrator, shall be borne equally by the parties engaged in
31 the arbitration. All other costs shall be paid by the party incurring
32 them.

33 (3) The parties shall mutually agree on an arbitrator. If the
34 parties cannot agree on the arbitrator, the arbitration provider shall
35 select an impartial arbitrator.

36 (4) (A) No later than 20 days after receipt of a notification to
37 arbitrate, the parties shall complete an initial exchange of all
38 nonprivileged documents and other information relevant to the
39 fair market value of the affected distribution rights in their
40 possession and control, including, without limitation, copies of all

1 documents and the names of individuals who may be called to
2 testify at the arbitration hearing. No later than 45 days after receipt
3 of notification to arbitrate, the parties shall complete an exchange
4 of the names of any experts who may be called to testify at the
5 arbitration hearing, together with each expert's report that may be
6 introduced at the arbitration hearing.

7 (B) The arbitrator may modify the requirements of subparagraph
8 (A) on a showing of good cause. The arbitrator shall permit
9 third-party discovery and additional discovery between beer
10 wholesalers, including depositions, which the arbitrator finds
11 appropriate for a period of time not to exceed 90 days after receipt
12 of a notification to arbitrate. No discovery shall be permitted
13 against a beer manufacturer.

14 (5) The decision of the arbitrator shall be final and binding on
15 the parties unless notice of appeal is filed, within 10 business days
16 after service of the arbitration award, with the superior court of
17 the county in which the hearing was held. Upon filing of the appeal,
18 the court shall review the arbitration award for errors of fact or
19 law by determining whether the award is supported by the
20 sufficiency of the evidence presented at the arbitration. This
21 subdivision shall further permit any other appeal or review that is
22 authorized by Title 9 (commencing with Section 1280) of Part 3
23 of the Code of Civil Procedure, which governs arbitration.

24 (6) The arbitrator's award shall be monetary only and shall not
25 enjoin or compel conduct.

26 (7) The arbitration hearing shall conclude not more than 180
27 days after receipt of a notification to arbitrate, unless the time
28 period is extended by mutual agreement of the parties or by the
29 arbitrator.

30 (8) The arbitrator shall render a decision not later than 15 days
31 after the conclusion of the arbitration unless this time period is
32 extended by mutual agreement of the parties or by the arbitrator.

33 (9) A party who fails to participate in the arbitration hearings
34 waives all rights the party would have had in the arbitration and
35 is considered to have consented to the determination of the
36 arbitrator.

37 (10) The Legislature finds and declares that several unique
38 factors in combination warrant the Legislature authorizing limited
39 mandatory arbitration between an existing beer wholesaler and a
40 successor beer manufacturer's designee solely to determine the

1 ~~issue of compensation for the fair market value of the affected~~
2 ~~distribution rights:~~

3 ~~(A) On the issue of the fair market value of the affected~~
4 ~~distribution rights, the parties are sophisticated and in an equal~~
5 ~~position in their knowledge of this legal issue and understand the~~
6 ~~law and their legal rights, including their jury trial rights.~~

7 ~~(B) The parties desire a mandatory arbitration provision to~~
8 ~~resolve the question of compensation for the fair market value of~~
9 ~~the affected distribution rights if the parties are not able to reach~~
10 ~~a mutual settlement so that product distribution can be continued~~
11 ~~in an orderly manner and the determination of compensation can~~
12 ~~be made in a timely manner.~~

13 ~~(C) The state's regulatory interest in maintaining orderly markets~~
14 ~~for the safe and efficient transportation, distribution, and sale of~~
15 ~~beer within the state warrants the statutory authorization for~~
16 ~~mandatory arbitration as provided in this section.~~

17 ~~(g) If the existing beer wholesaler does not receive payment of~~
18 ~~the compensation under subdivision (d) or (f) not later than 10~~
19 ~~business days after the date of the settlement or service of the~~
20 ~~arbitration award, and if there is no appeal or review filed under~~
21 ~~paragraph (5) of subdivision (f), the existing beer wholesaler shall~~
22 ~~remain the distributor of the product in the existing beer~~
23 ~~wholesaler's territory to at least the same extent that the existing~~
24 ~~beer wholesaler distributed the product immediately before the~~
25 ~~successor beer manufacturer acquired rights to the product, and~~
26 ~~the existing beer wholesaler is not entitled to the settlement or~~
27 ~~arbitration award.~~

28 ~~(h) Nothing in this section shall be construed to limit or prohibit~~
29 ~~good faith settlements voluntarily entered into by the parties~~
30 ~~subsequent to the successor beer manufacturer's notice pursuant~~
31 ~~to subdivision (e).~~

32 ~~SEC. 2. Section 25500.1 of the Business and Professions Code~~
33 ~~is amended to read:~~

34 ~~25500.1. (a) The listing of the names, addresses, telephone~~
35 ~~numbers, email addresses, or Internet Web site addresses, or other~~
36 ~~electronic media, of two or more unaffiliated on-sale or off-sale~~
37 ~~retailers selling beer, wine, or distilled spirits produced, distributed,~~
38 ~~or imported by a nonretail industry member in response to a direct~~
39 ~~inquiry from a consumer received by telephone, by mail, by~~
40 ~~electronic inquiry, or in person does not constitute a thing of value~~

1 or prohibited inducement to the listed on-sale or off-sale retailer,
2 provided all of the following conditions are met:

3 (1) The listing does not also contain the retail price of the
4 product.

5 (2) The listing is the only reference to the on-sale or off-sale
6 retailers in the direct communication.

7 (3) The listing does not refer only to one on-sale retailer or only
8 to on-sale or off-sale retail establishments controlled directly or
9 indirectly by the same retailer.

10 (4) The listing is made by, or produced by, or paid for,
11 exclusively by the nonretail industry member making the response.

12 (b) For the purposes of this section, “nonretail industry member”
13 is defined as a manufacturer, including, but not limited to, a beer
14 manufacturer, winegrower, or distiller of alcoholic beverages or
15 an agent of that entity, or a wholesaler, regardless of any other
16 licenses held directly or indirectly by that person.

17 SEC. 3. Section 25502.1 of the Business and Professions Code
18 is repealed.

19 SEC. 4. No reimbursement is required by this act pursuant to
20 Section 6 of Article XIII B of the California Constitution because
21 the only costs that may be incurred by a local agency or school
22 district will be incurred because this act creates a new crime or
23 infraction, eliminates a crime or infraction, or changes the penalty
24 for a crime or infraction, within the meaning of Section 17556 of
25 the Government Code, or changes the definition of a crime within
26 the meaning of Section 6 of Article XIII B of the California
27 Constitution.